

REMARKS

In order to advance the prosecution of this application, Applicants are voluntarily cancelling composition claims 8-16. Cancellation of these claims will obviate the various rejections of these claims under 35 U.S.C. §§ 102(b) and 103(a). These rejections are based primarily on the disclosure in the cited references of certain individual allergens recited in the rejected claims. Most of the allergens recited in the said claims are not disclosed in the cited references and, similarly, many of the additional constituents of the claimed compositions are not disclosed. Accordingly, Applicants reserve the right to reassert, in one or more continuing applications, claims to subject matter which they regard as patentable.

Rejection of Claims 1, 3, 4 and 6 as anticipated by WO 96/09762

In paragraph 2 of the Office Action, the Examiner has rejected claims 1, 3, 4 and 6 under 35 U.S.C. § 102(b) as anticipated by WO 96/09762 ("Rombi").

Rombi teaches a method for deactivating dust mite allergens (i.e. excreta) wherein glutaraldehyde is sprayed onto bedding, floors, walls and other surfaces. The glutaraldehyde is effective in denaturing the major antigens of Der-p and Der-f dust mites.

In response to this rejection, Applicants have amended claims 1, 3, 4 and 6 to delete reference to glutaraldehyde. Deletion of glutaraldehyde from the Markush group cannot be the basis for a new matter objection here. In examples 1 through 26, data are presented for each of the specific deactivants recited in claims 1 and 4 with respect to deactivating Der-f allergens. In examples 27-47 (numbered as 1-21 in the table on pages 19 and 20), data are presented for each of the deactivants, except (xvi), against Der-p

allergens. In these circumstances, omission of glutaraldehyde from the Markush groups in claims 1, 3, 4, and 6 is not new matter.

Newly presented claims 17-20 do not cover methods involving the use of glutaraldehyde and therefore these claims would not be anticipated by, or obvious over, the cited reference.

Rejection of Claims 1-5 and 7 as unpatentable over Blanc U.S. Patent No. 5,635,132 in view of WO 96/09762

In paragraph 7 of the Office Action, the examiner has rejected claims 1-5 and 7 under 35 U.S.C. § 103(a) as being obvious over Blanc U.S. Patent No. 5,635,132 (“Blanc”) in view of Rombi.

Blanc teaches that a composition containing thymol (6-isopropyl-m-cresol) in an aliphatic solvent [that] can be used to neutralize the allergenic ejecta of dust mites. See col. 2, lines 1-11; col. 3, 63-67; and Abstract. The composition is sprayed in aerosol form throughout the room to be treated so that it may contact all surfaces within the room (col. 3, lines 43-56). Although Blanc does not disclose that the dust mites are Der-f and/or Der-p, Rombi discloses that these are the two primary species of house dust mites (page 1, lines 6-11). Therefore, it would have been obvious to one of ordinary skill in the art that the dust mite allergens being denatured by the method of Blanc are those created by Der-f and/or Der-p.

This rejection is respectfully traversed, particularly in view of the foregoing amendment.

Blanc, which is the primary reference, discloses a method for decontamination of indoor spaces by a process intended to remove fungi, bacteria, acarids, particles of tobacco and mold, etc. The disclosed process involves spraying an aerosol composition into the center of a room, which is kept closed. Subsequently, the room is aired out and surfaces are cleaned by a “simple, damp wipe” – col. 3, line 55. The composition which is sprayed into a room is described as a “rich formulation of ten constituents” – col. 3, line 57 – which can include thymol (6-isopropyl-m-cresol). Rombi is used as a secondary reference for its disclosure of the two dust mites species Der-f and Der-p.

Applicants' claims are directed to methods for deactivating Der-f and Der-p allergens which comprises contacting them by, for example, spraying an effective amount of the deactivant onto the textile or fabric surfaces which harbor the allergens. The methods that are claimed in claims 4 and 5 clearly require applying the deactivant to fabric materials selected from rugs, carpets and upholstered furniture. Claims 1-3 and 7 have now been amended to specify that the allergens deactivated by Applicants' claim process are allergens that are present on a textile surfaces. (Support for this amendment may be found in the written description at page 2, lines 8-13.) The Blanc reference does not disclose treating textile surfaces or, for that matter, treating any surfaces at all. What the Blanc reference teaches is that one should spray an aerosol into the center of a closed room so that all elements of furniture in said room are exposed to the decontaminant product – col. 3, lines 43-52. After allowing a sufficient time for the product to act, one airs out the room, and cleans surfaces with a simple damp wipe – col. 3, lines 53-56. Clearly, the Blanc reference is not disclosing the treatment of textile surfaces with the decontaminant product. The only reasonable interpretation of the statement at col. 3, line 55, regarding the cleaning of surfaces is that the surfaces are wiped dry of any liquid material that may have settled thereon.

Treating surfaces!

Furthermore, it appears that Blanc has no intention of deactivating allergens. The Examiner's attention is directed to the discussion at col. 2, line 55, through col. 3, line 40. The paragraph bridging columns 2 and 3 discusses the well known methods of spraying a an acaricidal formulation on mattresses; this was a well-known concept and Blanc does not indicate what those acaricidal products contain. He goes on to say – paragraph beginning at col. 3 line 28 – that it is not always necessary to rid a dwelling of all acarids, since not everybody is allergic to acarids. This portion of the Blanc disclosure than clearly states that "rather than treating the surfaces and acarids directly, it would be better

acarids not their ejecta

to treat the source of pollution, the dust itself" – col. 3 line 38. In contrast to what the Blanc disclosure teaches, Applicants are treating the surface and acarids directly.

It is clear, therefore, that Applicants' method claims would not have been obvious over Blanc. The use of Rombi as a secondary reference for its disclosure of Der-f and Der-p mites adds nothing that would support the Examiner's rejection.

It is therefore urged that, in view of the foregoing amendments of claims 1-3 to specify that the allergens to be deactivated are present on a textile surface, these claims, and those dependent thereon, would not have been obvious over Blanc alone or with Rombi.

It is noted that newly presented claim 18 specifies that the deactivant is thymol. In view of the foregoing discussion, it is readily apparent that this claim also contains allowable subject matter.

Other Matters

The various rejections of claims 8-16 set forth by the Examiner in paragraphs 3, 8, 9 and 10 of the Office Action have been obviated by the cancellation of the subject claims. It is again noted that these claims are believed to contain patentable subject matter and Applicants reserve the right to claim such subject matter in one or more continuing applications.

In paragraph 11 of the Office Action the Examiner cites JP 6-237979, EP 0716143 and WO 99/53763 as indications of state of the art. The Examiner correctly did not make these the basis of any rejection. It should be noted also that WO 99/53763, by virtue of its publication date, is not an available reference.

*not claimed!
Claims
dust
Allergen
(dust)*

Applicant : Janette SUH et al.
Serial No. : 09/509,308
Filed : May 25, 2000
Page : 19 of 19

Attorney's Docket No.: 08291-435001 / 10184P1-US

Conclusion

In view of the foregoing amendment and these remarks, it is believed that all claims remaining in this application are in condition for allowance. Favorable action is therefore requested.

Respectfully submitted,

Date: 5 August 2003

Frederick H. Rabin

Frederick H. Rabin
Reg. No. 24,488

Fish & Richardson P.C.
45 Rockefeller Plaza, Suite 2800
New York, New York 10111
Telephone: (212) 765-5070
Facsimile: (212) 258-2291